

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA042308)**

INTRODUCTION

On 4/23/08, the Nevada Superintendent of Public Instruction received a complaint dated 4/21/08, from a student with disabilities and his parent. The complaint alleged violations in the special education program in the Washoe County School District (WCSD). Specifically, the complaint alleged that the WCSD:

1. Failed to implement a Mediation Agreement of November 2006
2. Failed to implement a Resolution Agreement dated 1/15/08
3. Retaliated against the student and the family
4. Discriminated against the student due to his disability and individual needs
5. Discriminated against the student due to his age
6. Failed to include a regular education teacher at a 3/18/08 Individualized Educational Program (IEP) meeting
7. Failed to provide the student and parent an opportunity to participate in the 3/18/08 IEP meeting
8. Failed to provide adequately trained staff to implement the student's IEP
9. Failed to provide home/hospital services to the student
10. Breached confidentiality

COMPLAINT ISSUES

Federal regulations at 34 CFR §300.153 give the Nevada Department of Education (NDE) jurisdiction to investigate complaints that a public agency has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) and/or the Nevada Administrative Code (NAC) for special education programs.

Analysis of the allegations listed above revealed that allegations #1–#5 included in this complaint were not under the jurisdiction of NDE, and the student and parent were referred to appropriate authorities to pursue these issues. Allegation #10 concerned alleged breaches of confidentiality including the use of e-mails in the 2004/2005 school year and unauthorized disclosures of the student's education records that reportedly occurred in April 2006 and again sometime in March 2007. Federal regulations at 34 CFR §300.153(c) and state regulations at NAC §388.318(1) require that complainants allege violations that occurred not more than one year to the date that the complaint is received. Because the alleged breach of confidentiality occurred more than one year prior to receipt of the complaint by the NDE, this issue was not under the jurisdiction of the NDE.

In addition to the above allegations, the student and parent requested that some information in the student's records be expunged and/or revised. The student and parent were referred to WCSD to request an amendment of these records and to take any further action necessary in accordance with the Family Educational Rights and Privacy Act (FERPA) regulations at 34 CFR §99.20.

Under the provisions of 34 CFR §300.152(b), the NDE extended the timeline for the completion of this report until 8/1/08.

A review of the complaint, further clarified by a review of the documents, raised the following issues under the jurisdiction of the NDE:

- ISSUE 1:** Whether the WCSD conducted the 3/18/08 IEP in accordance with state requirements specifically with regard to:
- a. Providing an opportunity for student and parent participation; and
 - b. Including a regular education teacher at the IEP meeting.

- ISSUE 2:** Whether the WCSD provided adequate training to personnel, specifically the principal and the case manager, in order to implement the student's IEP.
- ISSUE 3:** Whether the WCSD implemented the student's 3/18/08 IEP specifically with regard to a home/hospital placement.
- ISSUE 4:** Whether the WCSD complied with federal regulations to protect the confidentiality of personally identifiable information contained in education records.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Special Education Area Administrator (area administrator)
- Senior Director of Public Policy, Accountability and Assessment (senior director)
- Custodial Parent (parent)

DOCUMENTS REVIEWED

The investigation team reviewed the following documents:

- IEPs dated 2/1/07, 2/12/08, 3/18/08, and 4/24/08
- Copies of e-mails sent between WCSD and parent between 4/23/07, and 6/1/08
- Student's status record
- Student's attendance record
- E-mail from the parent to the complaint investigation team dated 6/17/08 clarifying allegations
- Consent forms signed by the student and/or parent between 4/23/07, and 4/21/08
- Prior Written Notice and proposed meeting arrangement forms sent to the student and parent for the 2/12/08 and the 3/18/08 meetings

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- Federal Register, Vol. 71, No. 156, 8/14/06, pp. 46603 and 46606
- Family Educational Rights and Privacy Act (FERPA) Regulations 34 CFR Part 99
- Family Policy Compliance Office, Frequently Asked Questions, 5/26/05

FINDINGS OF FACT

IEP Development

This investigation involved a special education student who is eligible for special education as a student with emotional disturbance. The student turned 18 in December 2007. There was no evidence of proceedings which would have resulted in a court adjudication of incompetence in order to prevent the transfer of IDEA rights to the student at age 18. The student was enrolled in WCSD during the 2007/2008 school year. A review of documents and interviews with the area administrator, the senior director, and the parent revealed the following facts.

At the beginning of the 2007/2008 school year, a 2/1/07 IEP was in effect. An IEP meeting was convened to draft an IEP on 2/12/08 (2/12/08 IEP). The 2/12/08 IEP was not completed. A follow-up meeting was convened on 3/18/08 and the IEP was completed (3/18/08 IEP).

A meeting notice dated 3/5/08, was sent to the student and the parent indicating there would be a meeting on 3/18/08, to develop/complete the 2/12/08 IEP. The district reported that the parent originally agreed to the meeting date and stated that she would be attending. There was no acknowledgement from the student that

he would attend, and there was no evidence indicating that the district made any other attempts to notify the student about the meeting and/or confirm that he was planning to attend the meeting. The meeting took place on 3/18/08, and the 3/18/08 IEP was completed. Neither the student nor the parent attended the 3/18/08 meeting.

The 3/18/08 IEP shows that a Local Education Agency (LEA) Representative, special education teacher, and counselor were the members of the IEP committee who completed the 3/18/08 IEP. The student's previous IEP and the 3/18/08 IEP included instruction to be provided in regular education classes. The area administrator reported that there was no agreement, written or otherwise, between the district and the student that the participation of a regular education teacher was not necessary.

The 3/18/08 IEP indicated that the student would be placed in the regular class and special education classroom, with 33% of his time in the regular education environment. Between 3/18/08 and the date of the complaint, there were various contacts including e-mail communication between the parent and the district concerning a proposed home-hospital placement. Subsequent to filing the complaint, an IEP developed on 4/24/08 changed the student's placement to home-hospital.

Personnel Training

The goals, objectives, and accommodations in the 2/1/07, 2/12/08, and 3/18/08 IEPs required implementation by classroom teachers. None of the provisions of these IEPs required implementation by the principal. None of these IEPs required specific training for implementation.

The area administrator stated that the current case manager was the special education classroom teacher for the student. The area administrator reported that the case manager was a "highly qualified special education teacher" in English, history, science and math and held a Nevada Endorsement to teach students with emotional disturbance.

Confidentiality of Records

The parent in this case claims the student as a dependent for Internal Revenue Service tax purposes even though the student is now 18 years old. The parent stated that student's attendance records had been released to the wife of the student's father, without the student's consent, on 4/25/08. The senior director confirmed that the attendance records are part of the student's education records, and they had been released to the student's father, but not to his wife.

CONCLUSIONS OF LAW AND REASONS

State regulations at NAC §388.195 provide that unless a student has been determined by a court to be incompetent under state law, the rights previously accorded to his parents under the IDEA transfer to the student at age 18. In this case, the student turned 18 in December 2007, and the discussion below takes this fact into account as relevant to the analysis of the issues.

ISSUE 1: Whether the WCSD conducted the 3/18/08 IEP in accordance with state requirements specifically with regard to:

- a. Providing an opportunity for student and parent participation; and
- b. Including a regular education teacher at the IEP meeting.

a. Providing an opportunity for student and parent participation in IEP development

This complaint concerned an allegation that the student and parent did not have an opportunity to participate in the development of the IEP dated 3/18/08.

State regulations at NAC §388.281 (8) to (10) require that the district “provide the parents of the pupil written notice of ... the [IEP] committee meeting early enough to ensure that the parents will have an opportunity to attend. If the parents do not acknowledge receipt of the notice given..., the public agency shall make additional attempts to notify them, which may include, without limitation, attempts to notify them by telephone or through a visit to their home or place of employment. The public agency shall keep detailed records of any telephone calls, correspondence or visits made ... and their results, if any.”

In this case, the WCSD was obligated to provide the opportunity to participate in the 3/18/08 IEP meeting to the student, not the parent, because the student had turned 18 in December and the IDEA rights had transferred to him. Written notice dated 3/5/08, was provided to the student and the parent for the 3/18/08, IEP meeting. There was no acknowledgement from the student that he received the IEP meeting notice, and the district did not make any additional attempts to notify the student about the 3/18/08 IEP meeting. The district conducted the meeting as scheduled without the student present.

Therefore, the investigation team concluded that WCSD did not comply with state regulations with regard to providing an opportunity for the adult student to participate the 3/18/08 IEP meeting.

b. Including a regular education teacher at the IEP meeting

This complaint concerned an allegation that a regular education teacher did not participate in the 3/18/08 IEP meeting.

State regulations at NAC §388.281(2)(b) require that if the pupil participates in a regular educational environment, the IEP committee must include “one regular classroom teacher who teaches the pupil or, if the pupil may participate in a regular education environment, one regular classroom teacher.” State regulations at NAC §388.281(4) allow that a member of an IEP committee may not be required to attend an IEP meeting if both the agency and the parent agree in writing that the attendance of the member is not necessary. State regulations at NAC §388.281(5) allow that a member of an IEP committee may be excused from attendance even if that person's input is required, if the district and the parent agree in writing and the committee member provides input in advance.

The student's 3/18/08 IEP included placement in the regular education environment, and therefore the participation of a regular education teacher was required. The 3/18/08 IEP committee did not include a regular classroom teacher. There was no written agreement between the district and the student that the attendance of a regular education teacher was not necessary or otherwise excused.

Therefore, the investigation team concluded that WCSD did not comply with state regulations with regard to the participation of a regular education teacher in the student's 3/18/08 IEP meeting.

ISSUE 2: Whether the WCSD provided adequate training to personnel, specifically the principal and the case manager, in order to implement the student's IEP.

This complaint concerned an allegation that the school principal and the student's case manager were not adequately trained to provide appropriate services to the student.

State regulations in NAC Chapter 388 (2007) require that “the public agency must ensure that personnel ... must be appropriately and adequately prepared and trained ... to serve pupils with disabilities.”

In this case there was no requirement in the 2/1/07, 2/12/08, or 3/18/08 IEPs for the principal to implement any portion of the student's IEPs. The case manager, who also served as the student's special education teacher, was a highly qualified Special Education teacher, licensed in Nevada to provide services to the

student as required by the IEPs. There was no requirement in the student's IEPs that the special education teacher have any additional qualifications or training to implement the student's IEPs.

Therefore, the investigation team concluded that WCSD complied with state regulations regarding providing adequate training to personnel, specifically the case manager and the principal, in order to implement the student's IEP.

ISSUE 3: Whether the WCSD implemented the student's 3/18/08 IEP specifically with regard to a home/hospital placement.

This complaint concerned an allegation that the student was denied a home-hospital placement.

State regulations at NAC §388.281(6)(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee." Since the IEP sets forth the student's placement, the district must implement the placement specified in the student's IEP.

In this case, the 3/18/08 IEP committee determined that the placement for the student was in the regular and special education classroom environment. Although there were discussions between district staff and the parent between that date and 4/24/08 when the student's placement was changed to home-hospital, the placement in effect at the time the complaint was filed was not a home-hospital placement.

Therefore, the investigation team concluded that WCSD complied with state regulations regarding implementation of the student's home-hospital placement.

ISSUE 4: Whether the WCSD complied with federal regulations to protect the confidentiality of personally identifiable information contained in education records.

This complaint concerned an allegation that the district allowed unauthorized access to and disclosure of attendance records contained in the student's computerized SASI file on 4/25/08. The parent alleged that the student's records were disclosed to the wife of the student's father. The WCSD acknowledged that the student's education records were disclosed to the student's father without the student's consent, but not to his wife. There was a lack of evidence to establish conclusively that a disclosure had been made to the wife of the student's father.

Although this alleged breach of confidentiality occurred after the date the complaint was received by the NDE, the NDE had the authority to incorporate this issue into this investigation because the allegation was related to other allegations concerning breach of confidentiality. The U.S. Department of Education's discussion of IDEA regulations on the amendment of a state complaint states "if the additional information a parent submits is on the same or related incident, it would be part of the amended complaint. ... It is, ultimately, left to each State to determine whether the new information constitutes a new complaint or whether it is related to a pending complaint." (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46603). In this case, the NDE determined that the information provided by the parent after the date of the complaint was sufficiently related to previous allegations to be incorporated into this complaint.

Federal FERPA regulations at 34 CFR §99.5(a) state that when a student turns 18 years old, the rights under FERPA transfer from the parents to the student ("eligible student"). Because the student in this case was 18 on 4/25/08, when the alleged improper disclosure occurred, the right to consent to disclosure of education records was the student's right.

Federal IDEA regulations at 34 CFR §300.622 state that "consent must be obtained before personally identifiable information is disclosed to parties ... unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99 [the FERPA regulations]."

Federal FERPA regulations at 34 CFR §99.31(a)(8) state that "an educational agency or institution may disclose personally identifiable information from an educational record of a student without the consent ... if the ... disclosure is to parents ... of a dependent student, as defined in section 152 of the Internal Revenue Code." The United States Department of Education Family Policy Compliance Office in their Frequently Asked Questions dated 5/26/05, interpreted 34 CFR §99.31(a)(8) and determined that "...although the rights under FERPA have now transferred to the student, a school may disclose information from an 'eligible student's' education records to the parents of the student, without the student's consent, if the student is a dependent for tax purposes. Neither the age of the student nor the parent's status as a custodial parent is relevant. If a student is claimed as a dependent by either parent for tax purposes, then either parent may have access under this provision." (Emphasis added.)

In this case, the WCSD acknowledged that attendance records contained in the student's education records were disclosed without the student's consent to the student's father, but not to his wife. Because the student is claimed as a dependent by one of his parents, disclosure to either parent without the consent of the student was permitted under 34 CFR §99.31(a)(8).

Therefore, the investigation team concluded that WCSD complied with federal regulations to protect the confidentiality of personally identifiable information after the student turned 18.

ORDER FOR CORRECTIVE ACTION

The WCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not take all steps necessary in state regulations to provide an opportunity for the participation of an 18-year-old student in an IEP meeting and did not include a regular education teacher at the student's IEP meeting.

Professional Development/Training

Within 30 days of receipt of this report, the WCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must include a plan to review and revise, where necessary, site-level and district-level policies and procedures and provide training to appropriate parties with regard to:

- a. Implementing procedures to ensure students who are 18 and older and for whom IDEA rights have transferred to the student are notified of IEP meetings in accordance with state regulations; and
- b. Implementing the requirements for regular education teachers at all IEP meetings where the student participates in regular education or may participate in regular education.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.